

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

THURSDAY, THE 12TH JULY 2007 / 21ST ASHADHA 1929

CRL.A.No. 293 of 2002()

**SC.360/2000 of ADDL. DISTRICT & SESSIONS COURT (ADHOC),
KOTTAYAM**
.....

APPELLANT: ACCUSED:

**DIVAKARAN, S/O.ACHUTHANKUTTY,
CHERUVELIPARAMBIL HOUSE, THRIKKODITHANAM KARA,
THRIKODITHANAM VILLAGE.**

BY ADV. SRI.JOHN VARGHESE

RESPONDENTS: COMPLAINANT:

**STATE OF KERALA, REPRESENTED BY THE
PUBLIC PROSECUTOR,HIGH COURT OF KERALA,ERNAKULAM.**

BY PUBLIC PROSECUTOR SRI.DILIP .S.

**THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD
ON 12/ 07/2007 , THE COURT ON THE SAME DAY
DELIVERED THE FOLLOWING:**

CRL.A. 293/2002

ORDER ON CRL.MP. NO.2842/2002 IN CRRP. NO.293/2002

DISMISSED

12.07.2007

SD/- K.R.UDAYABHANU, JUDGE

/TRUE COPY/

PA. TO JUDGE

tss

K.R.UDAYABHANU, J

Crl.A.No.293 of 2002

Dated this the 12th day of July, 2007

JUDGMENT

The appellant stands convicted for the offence under Section 55(a) of the Abkari Act and sentenced to undergo R.I. for three years and to pay a fine of Rs.1 lakh and in default, to undergo simple imprisonment for sixty days.

2. The prosecution case is that on 26.4.1999 at about 3.00 p.m., on a search of the house of the accused, four bottles of Indian made foreign liquor of 750 ml. each which was recovered from a bigshopper kept in the kitchen. The chemical analysis report indicated that the bottles contained ethyl alcohol and each of the samples had more than 42% by volume of ethyl alcohol. The prosecution has no case that what has been taken into custody is illicit liquor, but only that the same is company made foreign liquor. At the time, the quantity that can be kept by an individual was 1.5 litres. In the instant case, the quantity amounts to 3 litres. The total quantity that can be processed as per Rule 11(A) of Foreign Liquor Rules after amendment dated

2.8.2003 is three litres. The date of the incident case is 26.4.1999.

3. The Govt. Pleader submitted that the conviction can be altered to Section 63 of the Abkari Act and punishment may be modified.

4. In the circumstances, the conviction is altered to one under Section 63 of the Abkari Act and the sentence is modified to pay a fine of Rs.5,000/- and in default, to undergo simple imprisonment for three months.

The appeal is disposed of accordingly.

**K.R.UDAYABHANU,
JUDGE**